



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 09 2016

ELECTRONIC MAIL

REPLY TO THE ATTENTION OF:

Robert T. Smith  
rsmith@swappc.com  
Attorney  
Sullivan, Ward, Asher & Patton, P.C.

Re: Metro Cold Storage Inc., and Eastern Cold Storage Company, Detroit, Michigan Consent Agreement and Final Order, Docket Nos. **MM-05-2017-0002** **CERCLA-05-2017-0002**

Dear Mr. Smith:

**EPCRA-05-2017-0002**

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on November 9, 2016.

Please pay the CERCLA civil penalty in the amount of \$9,000 in the manner prescribed in paragraphs 115-117, and reference your check with the billing document number 2751730B002 and the docket number(s) **CERCLA-05-2017-0002**.

Please pay the EPCRA civil penalty in the amount of \$66,000 in the manner prescribed in paragraphs 118-121, and reference your check with the docket number(s) **EPCRA-05-2017-0002**.

Your payments are due within 30 days of the filing date on December 9, 2016.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jillian Rountree, Associate Regional Counsel, at (312) 353-3849. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

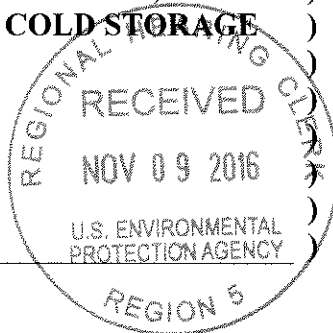
Enclosure

cc: Jay Eickholt,  
EMHSD/Michigan Department of State Police (w/ enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket Nos. CERCLA-05-2017-0002</b>
	)	
<b>METRO COLD STORAGE, INC.</b>	)	<b>CERCLA:</b>
<b>AND EASTERN COLD STORAGE</b>	)	<b>EPCRA: EPCRA-05-2017-0002</b>
<b>COMPANY</b>	)	<b>MM: MM-05-2017-0002</b>
<b>Detroit, MI</b>	)	<b>Proceeding to Assess a Civil Penalty Under</b>
<b>Respondents.</b>	)	<b>Section 109(b) of the Comprehensive</b>
	)	<b>Environmental Response, Compensation and</b>
	)	<b>Liability Act and Sections 325(b)(2) and</b>
	)	<b>(c)(1) of the Emergency Planning and</b>
	)	<b>Community Right-to-Know Act of 1986</b>

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**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Sections 325(b)(2) and 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(b)(2), (c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondents are Metro Cold Storage, Inc. and Eastern Cold Storage Company (Metro and Eastern, both part of The Santemp Group). They are corporations and/or limited liability companies doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondents consent to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and their right to appeal this CAFO.

#### **Statutory and Regulatory Background**

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

14. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility that is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II information,

as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

15. Sections 311 and 312(a) of EPCRA, 42 U.S.C. § 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

16. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

17. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

18. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Sections 325(b)(2) and 325(c)(1) of EPCRA, 42 U.S.C. §§ 11045(b)(2), (c)(1), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Sections 304 and 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

**Factual Allegations and Alleged Violations**

19. Respondents are each a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. Respondents are each a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

21. At all times relevant to this CAFO, Respondent Metro was the owner of the facility located at 2529 Orleans Street, Detroit, MI 48207; and Respondent Eastern was the owner of the facility located at 2531 Riopelle Street, Detroit, MI 48207 (facilities).

22. Respondents’ facilities are located in the city of Detroit, county of Wayne, and state of Michigan.

23. At all times relevant to this CAFO, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a), the SERC for Michigan was the Michigan Citizen-Community Emergency Response Coordinating Council (SERC).

24. At all times relevant to this CAFO, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a), the LEPC for Detroit, Michigan was the Detroit LEPC (LEPC).

25. Respondents’ facilities consist of an installation, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

26. Respondents’ facilities are each a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. Respondents’ facilities consist of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which

are owned or operated by the same person.

28. Respondents' facilities are each a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

29. At all times relevant to this CAFO, Respondent Metro was in charge of the facility located at 2529 Orleans Street, Detroit, MI 48207.

30. At all times relevant to this CAFO, Respondent Eastern was in charge of the facility located at 2531 Riopelle Street, Detroit, MI 48207.

31. At all times relevant to this CAFO, Respondents were employers at the facilities.

#### Ammonia

32. Ammonia, CAS #7664-41-7, ("ammonia") is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and an "extremely hazardous substance," according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

33. Ammonia has a reportable quantity of 100 pounds under 40 C.F.R. Part 302, Table 302.4 and 40 C.F.R. Part 355, Appendix A.

34. Ammonia is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and 29 C.F.R. § 1910.1200(c).

35. Ammonia has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

36. At all times relevant to this CAFO, ammonia was produced, used, or stored at Respondents' facilities.

37. OSHA requires Respondents to prepare, or have available, Material Safety Data Sheets for ammonia.

### Sulfuric Acid

38. Sulfuric acid, CAS #7664-93-9, (“sulfuric acid”) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c), and an “extremely hazardous substance,” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

39. Sulfuric acid has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

40. At all times relevant to this CAFO, sulfuric acid was produced, used, or stored at Respondents’ facilities.

41. OSHA requires Respondents to prepare, or have available, Material Safety Data Sheets for sulfuric acid.

### COUNT 1

42. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

43. During at least one period of time in calendar year 2010, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

44. During at least one period of time in calendar year 2010, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

45. Respondents were required to submit to the SERC, LEPC, and fire department, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or before March 1, 2011 for calendar year 2010.

46. Respondents submitted to the SERC and LEPC an incomplete Emergency and



Hazardous Chemical Inventory Form including 1000 pounds of ammonia but not including sulfuric acid on June 27, 2011, for calendar year 2010. The reported amount of ammonia was less than the amount of ammonia estimated to be at the facilities. As of August 1, 2016, Respondents had not submitted to SERC or LEPC a complete Emergency and Hazardous Chemical Inventory Form that included sulfuric acid or the full amount of ammonia at their facilities for calendar year 2010.

47. Respondents' failure to submit complete Emergency and Hazardous Chemical Inventory Forms (that included sulfuric acid and the full amount of ammonia onsite) to the SERC and the LEPC by March 1, 2011, for calendar year 2010, constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### COUNT 2

48. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

49. During at least one period of time in calendar year 2011, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

50. During at least one period of time in calendar year 2011, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

51. Respondents were required to submit to the SERC, LEPC, and fire department, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or before March 1, 2012 for calendar year 2011.

52. Respondents submitted to the SERC and LEPC an incomplete Emergency and Hazardous Chemical Inventory Form including 1000 pounds of ammonia but not including

sulfuric acid on March 12, 2012, for calendar year 2011. The reported amount of ammonia was less than the amount of ammonia estimated to be at the facilities. As of August 1, 2016, Respondents had not submitted to SERC or LEPC a complete Emergency and Hazardous Chemical Inventory Form that included sulfuric acid or the full amount of ammonia at their facilities for calendar year 2011.

53. Respondents' failure to submit complete Emergency and Hazardous Chemical Inventory Forms (that included sulfuric acid and the full amount of ammonia onsite) to the SERC and the LEPC by March 1, 2012, for calendar year 2011, constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### COUNT 3

54. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

55. During at least one period of time in calendar year 2012, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

56. During at least one period of time in calendar year 2012, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

57. Respondents were required to submit to the SERC, LEPC, and fire department, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or before March 1, 2013 for calendar year 2012.

58. Respondents submitted to the SERC and LEPC an incomplete Emergency and Hazardous Chemical Inventory Form including 1000 pounds of ammonia and not including sulfuric acid, on March 11, 2013, for calendar year 2012. The reported amount of ammonia was

less than the amount of ammonia estimated to be at the facilities. As of August 1, 2016, Respondents had not submitted to SERC or LEPC a complete Emergency and Hazardous Chemical Inventory Form that included sulfuric acid or the full amount of ammonia at their facilities for calendar year 2012.

59. Respondents' failure to submit complete Emergency and Hazardous Chemical Inventory Forms (that included sulfuric acid and the full amount of ammonia onsite) to the SERC and the LEPC by March 1, 2013, for calendar year 2012, constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### COUNT 4

60. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

61. During at least one period of time in calendar year 2013, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

62. During at least one period of time in calendar year 2013, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

63. Respondents were required to submit to the SERC, LEPC, and fire department, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or before March 1, 2014, for calendar year 2013. Respondents submitted an unsigned, non-finalized Emergency and Hazardous Chemical Inventory Form for calendar year 2013. As of August 1, 2016, Respondents had not submitted to SERC and LEPC a signed, finalized Emergency and Hazardous Chemical Inventory Form that included sulfuric acid or the full amount of ammonia at their facilities for calendar year 2013.

64. Respondents' failure to submit complete Emergency and Hazardous Chemical Inventory Forms (that included sulfuric acid and the full amount of ammonia onsite) to the SERC and the LEPC by March 1, 2014, for calendar year 2013, constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

COUNT 5

65. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

66. During at least one period of time in calendar year 2014, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

67. During at least one period of time in calendar year 2014, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

68. Respondents were required to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or before March 1, 2015 for calendar year 2014.

69. Respondents submitted to the SERC an incomplete Emergency and Hazardous Chemical Inventory Form that included 1000 pounds of ammonia and no sulfuric acid on November 23, 2015, for calendar year 2014. The reported amount of ammonia was less than the amount of ammonia estimated to be at the facilities. As of August 1, 2016, Respondents had not completed an Emergency and Hazardous Chemical Inventory Form that included sulfuric acid or the full amount of ammonia at their facilities for calendar year 2014.

70. Respondents' failure to submit to the SERC a completed Emergency and Hazardous

Chemical Inventory Form (that included sulfuric acid and the full amount of ammonia onsite) by March 1, 2015, for calendar year 2014 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

COUNT 6

71. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

72. During at least one period of time in calendar year 2014, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

73. During at least one period of time in calendar year 2014, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

74. Respondents were required to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or before March 1, 2015 for calendar year 2014.

75. Respondents submitted to the LEPC an incomplete Emergency and Hazardous Chemical Inventory Form that included 1000 pounds of ammonia and no sulfuric acid on November 23, 2015, for calendar year 2014. The reported amount of ammonia was less than the amount of ammonia estimated to be at the facilities. As of August 1, 2016, Respondents had not completed an Emergency and Hazardous Chemical Inventory Form that included sulfuric acid or the full amount of ammonia at their facilities for calendar year 2014.

76. Respondents' failure to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form (that included sulfuric acid and the full amount of ammonia onsite) by March 1, 2015, for calendar year 2014 constitutes a violation of Section 312(a) of EPCRA,

42 U.S.C. § 11022(a).

COUNT 7

77. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

78. During at least one period of time in calendar year 2015, ammonia was present at the facilities in an amount equal to or greater than the minimum threshold level.

79. During at least one period of time in calendar year 2015, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

80. Respondents were required to submit a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid to the SERC on or before March 1, 2016 for calendar year 2015.

81. Respondents submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on May 18, 2016, for calendar year 2015.

82. Respondents' failure to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form (that included sulfuric acid and the full amount of ammonia onsite) by March 1, 2016, for calendar year 2015 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

COUNT 8

83. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

84. During at least one period of time in calendar year 2015, ammonia was present at

the facilities in an amount equal to or greater than the minimum threshold level.

85. During at least one period of time in calendar year 2015, sulfuric acid was present at the facilities in an amount equal to or greater than the minimum threshold level.

86. Respondents were required to submit a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid to the LEPC on or before March 1, 2016 for calendar year 2015.

87. Respondents submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on May 18, 2016, for calendar year 2015.

88. Respondents' failure to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form (that included sulfuric acid and the full amount of ammonia onsite) by March 1, 2016, for calendar year 2015 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### COUNT 9

89. The parties incorporate paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

90. On November 22, 2014, a release began at Respondent Metro's facility (2529 Orleans Street, Detroit, MI 48207) of ammonia, CAS # 7664-41-7 (the release).

91. In a 24 hour time period, the release of ammonia exceeded 100 pounds.

92. During the release, approximately 500 pounds of ammonia discharged into the ambient air.

93. The release is a "release" as that term is defined under Section 101(22) of

CERCLA, 42 U.S.C. § 9601(22).

94. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

95. Respondent Metro had knowledge of the release on November 22, 2014.

96. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

97. As of August 1, 2016, Respondent Metro had not notified the NRC of the release.

98. Respondent Metro’s failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

COUNT 10

99. The parties incorporate paragraphs 1 through 41 and 89 through 98 of this CAFO as if set forth in this paragraph.

100. The release was likely to affect Michigan.

101. As of August 1, 2016, Respondents had not notified the SERC of the release.

102. Respondent Metro’s failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

COUNT 11

103. The parties incorporate paragraphs 1 through 41 and 89 through 98 of this CAFO as if set forth in this paragraph.

104. The release was likely to affect Wayne County and the city of Detroit.

105. As of August 1, 2016, Respondent Metro had not notified the LEPC of the release.

106. Respondent Metro’s failure to immediately notify the LEPC of the release is a



violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

COUNT 12

107. The parties incorporate paragraphs 1 through 41 and 89 through 98 of this CAFO as if set forth in this paragraph.

108. As of August 1, 2016, Respondents had not provided written follow-up emergency notice of the release to the SERC.

109. Respondent Metro did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

110. Respondent Metro's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

COUNT 13

111. The parties incorporate paragraphs 1 through 41 and 89 through 98 of this CAFO as if set forth in this paragraph.

112. As of August 1, 2016, Respondent Metro had not provided written follow-up emergency notice of the release to the LEPC.

113. Respondent Metro did not provide the LEPC with written follow-up emergency notice of the release as soon as practicable after the release occurred.

114. Respondent Metro's failure to provide written follow-up emergency notice to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

### Civil Penalty

115. Complainant has determined that an appropriate civil penalty to settle Respondent Metro's CERCLA violation (count 9) is \$9,000.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and, with respect to Respondent Metro, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

116. Respondent Metro must pay a \$9,000.00 civil penalty in three (3) installments with interest as follows: \$3,000.00 within 30 days of the effective date of this CAFO; \$3,000.00, plus interest, within 60 days of the effective date of this CAFO; and \$3,000.00, plus interest, within 90 days of the effective date of this CAFO.

<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (1%)</u>
Payment #1	Within 30 days of effective date of CAFO	\$3,000.00	\$3,000.00	\$0
Payment #2	Within 60 days of effective date of CAFO	\$3,005.00	\$3,000.00	\$5.00
Payment #3	Within 90 days of effective date of CAFO	\$3,002.50	\$3,000.00	\$2.50

117. Respondent Metro must pay the \$9,000.00 penalty installments as set forth in paragraph 116, by one (1) of the following methods:

- a. Sending a cashier's or certified check, payable to "EPA Hazardous Substance

Superfund,” to:

For regular U.S. Postal Service:  
U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

For Express Mail:  
U.S. Bank  
Government Lockbox 979076 U.S. EPA Superfund Payments  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Metro Cold Storage, the docket numbers of this CAFO, and the billing document number.

b. Electronic funds transfer, payable to “EPA Hazardous Substance Superfund,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read:  
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: Metro Cold Storage, the docket numbers of this CAFO, and the billing document number.

c. ACH electronic funds transfer, payable to “EPA Hazardous Substance Superfund,” and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Metro Cold Storage, the docket numbers of this CAFO, and the billing document number.

or

d. An on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

118. Complainant has determined that an appropriate civil penalty to settle Respondent Metro's EPCRA release violations (counts 10 through 13) is \$36,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

119. Respondent Metro must pay a \$36,000.00 civil penalty in three (3) installments with interest as follows: \$12,000.00 within 30 days of the effective date of this CAFO; \$12,000.00, plus interest, within 60 days of the effective date of this CAFO; and \$12,000.00, plus interest, within 90 days of the effective date of this CAFO.

<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (1%)</u>
Payment #1	Within 30 days of effective date of CAFO	\$12,000.00	\$12,000.00	\$0
Payment #2	Within 60 days of effective date of CAFO	\$12,020.00	\$12,000.00	\$20.00
Payment #3	Within 90 days of effective date of CAFO	\$12,010.00	\$12,000.00	\$10.00

120. Complainant has determined that an appropriate civil penalty to settle Respondent Metro's and Respondent Eastern's Tier II EPCRA violations (counts 1 through 8) is \$30,000. Respondents are jointly and severally liable for the \$30,000 penalty. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations,

and, with respect to Respondents, their ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

121. Respondents must pay a \$30,000.00 civil penalty in three (3) installments with interest as follows: \$10,000.00 within 30 days of the effective date of this CAFO; \$10,000.00, plus interest, within 60 days of the effective date of this CAFO; and \$10,000.00, plus interest, within 90 days of the effective date of this CAFO.

<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (1%)</u>
Payment #1	Within 30 days of effective date of CAFO	\$10,000.00	\$10,000.00	\$0
Payment #2	Within 60 days of effective date of CAFO	\$10,016.67	\$10,000.00	\$16.67
Payment #3	Within 90 days of effective date of CAFO	\$10,008.33	\$10,000.00	\$8.33

122. Respondents must pay the penalty installments, as set forth in paragraphs 119 and 121, by one (1) of the following methods:

- a. Sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

For regular U.S. Postal Service:  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For Express Mail:  
U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Metro Cold Storage for the payments under paragraph 119 and both Metro Cold Storage and Eastern Cold Storage for the payments under paragraph 121, as well as the docket numbers of this CAFO.

b. Electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Metro Cold Storage for the payments under paragraph 119 and both Metro Cold Storage and Eastern Cold Storage for the payments under paragraph 121, as well as the docket numbers of this CAFO.

c. ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Metro Cold Storage for the payments under paragraph 119 and both Metro Cold Storage and Eastern Cold Storage for the payments under paragraph 121, as well as the docket numbers of this CAFO.

or

d. An on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

123. A transmittal letter, stating Respondents' names, the case name, Respondents' complete addresses, the case docket numbers, the payment method(s) and amounts, and the billing document number(s), if any, must accompany each installment payment, as set forth in paragraphs 116, 119, and 121. Respondents must send a copy of the check(s), if applicable, and transmittal letters to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Ginger Jager, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Jillian Rountree, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

124. This civil penalty is not deductible for federal tax purposes.

125. If Respondents do not timely pay the civil penalties, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

126. Pursuant to 31 C.F.R. § 901.9, Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondents must pay a

\$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

127. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: rountree.jillian@epa.gov and berman.michael@epa.gov (for Complainant) and rsmith@swappc.com (for Respondents). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

128. This CAFO concludes and resolves all federal civil penalties Complainant may pursue against Respondents for the violations alleged in the CAFO but does not affect Complainant’s ability to pursue penalties against Respondents for any violations not listed in this CAFO.

129. Furthermore, this CAFO resolves only Respondents’ liability for federal civil penalties for the violations alleged in the CAFO. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

130. Respondents certify that they are complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304 of EPCRA, 42 U.S.C. § 11004, and Section 312 of EPCRA, 42 U.S.C. § 11022.



131. This CAFO does not affect Respondents' responsibility to comply with CERCLA, EPCRA, and other applicable federal, state, and local laws and regulations.

132. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

133. The terms of this CAFO bind Respondents and their successors and assigns.

134. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

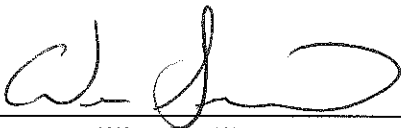
135. Each party agrees to bear its own costs and attorney's fees in this action.

136. This CAFO constitutes the entire agreement between the parties.

137. The CAFO is effective upon filing with the Regional Hearing Clerk.

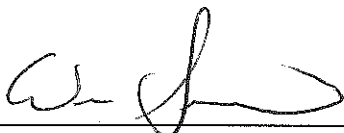
**Metro Cold Storage, Inc., Respondent**

10/7/2016  
Date

  
Name: William Sullivan  
Title: President

**Eastern Cold Storage Company, Respondent**

10/7/2016  
Date

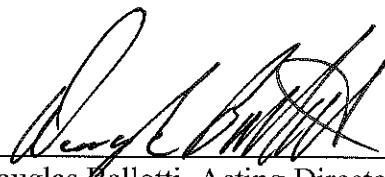
  
Name: William Sullivan  
Title: President

**U.S. Environmental Protection Agency, Complainant**

11/01/2016  
Date

M. Cecilia Moore  
M. Cecilia Moore, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

11/2/2016  
Date

  
Douglas Ballotti, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Metro and Eastern Cold Storage**

**Docket No. [MM-05-2017-0002**

**CERCLA-05-2017-0002**

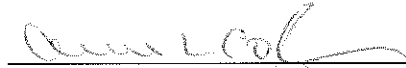
**EPCRA-05-2017-0002**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

November 18, 2016

Date



Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Metro and Eastern Cold Storage**

**Docket No. [ MM-05-2017-0002**

**CERCLA-05-2017-0002**

**EPCRA-05-2017-0002**

**Certificate of Service**

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on November 9, 2016 in the following manner to the addressees:

Copy by E-mail:

Robert T. Smith, Attorney for Respondents  
rsmith@swappc.com

Copy by E-mail to

Attorney for Complainant:


Jillian Rountree  
rountree.jillian@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

November 9, 2016 

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5